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**COPY MAILED**

**AUG 29 2007**

In re Application of  
Konstantin Melamed et al  
Application No. 10/720,055  
Filed: November 25, 2003  
Attorney Docket No. SYBM-001UTL

**OFFICE OF PETITIONS**  
**DECISION ON PETITION**

This is a decision on the petition, filed April 30, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely pay the issue and publication fees on or before February 28, 2007, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed November 29, 2006.

Petitioner asserts that the Notice dated November 29, 2006 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and

3. a copy of the docket record where the nonreceived Notice would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy 2 and 3 of the above-stated requirements.

Accordingly, absent the required evidence to establish nonreceipt of the Notice of November 29, 2006, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

The \$750 "unintentional" petition under 37 CFR 1.137(b) fee was received on April 30, 2007. If Petitioner does not file a petition under 37 CFR 1.137(b), the petitioner may request a refund of this fee by writing to Mail Stop 16, Refund Requests. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:


By Mail:                      Mail Stop PETITION  
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By hand:                      U. S. Patent and Trademark Office  
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By facsimile: **(571) 273-8300**  
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

  
Irvin Dingle  
Petition Examiner  
Office of Petitions